

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Tribal Welfare Department - Khammam District- Revision Petition filed by Sri Kari Koteswara Rao S/o.Rama Bhadraiah R/o Rudrampur (V) Kothagudem (M) Khammam District - against the Orders of the Additional Agent to Government in C.M.A No:11/2010, dated:19-11-2011 in respect of Acres 2.04 guntas in Survey No:148/3, Acs.2.18 gts in 148/4, Acs.2.00 gts in Sy.No.148/5, Acs. 2.13 in Sy.No. 148/6, Ac.2.29 in Sy.No.148/7, Ac.2.24 in Sy.No.148/8 and Ac.0.01 in Sy.No.148/9 (Total extent Ac.14.09 gts) of Chechupally (V) Kothagudem (M) Khammam District - Dismissed - Orders - Issued.

SOCIAL WELFARE (LTR-2) DEPARTMENT

G.O.MS.No.13

Dated:15.02.2013
Read the following:

1. Revision Petition filed by Sri Karri Koteswara Rao, S/o.Ramabhadraiah dated.03.12.2011.
2. Govt.Memo.No.17141/LTR-2/2011,dated.08.02.2012.
addressed to the Additional Agent to Government & Project Officer, ITDA, Bhadrachalam, Khammam District.
3. From the Addtitional Agent to Governmand & Project Officer, ITDA, Bhadrachalam, Khammam District Ref.RP.No.17141/LTR-2/2011, dated.25.04.2012.
4. Govt.Lr.No.17141/LTR-2/2011,dated.26.07.2012.

ORDER:

Sri Kari Koteswara Rao S/o.Rama Bhadraiah R/o Rudrampur (V) Kothagudem (M) Khammam District in the reference 1st read above has filed Revision Petition before the Government against the orders of the Additional Agent to Government in CMA No. 11/2010, dated:19-11-2011 in respect of Acres 2.04 guntas in Survey No:148/3, Acs.2.18 gts in 148/4, Acs.2.00 gts in Sy.No.148/5, Acs. 2.13 in Sy.No. 148/6, Ac.2.29 in Sy.No.148/7, Ac.2.24 in Sy.No.148/8 and Ac.0.01 in Sy.No.148/9 (Total extent Ac.14.09 gts) of Chechupally (V) Kothagudem (M) Khammam District. The main grounds of the Appellant in Revision Petition is as given below:

1. The material placed before the SDC is different to the material placed before the A.A.G. by the Maloth Srinu and his father purchased the property in the year 1973 is totally new document .
2. the land in question belongs to his grand father is not proved and failed to explain how the persons by name Malothu Mangthu and Maloth Baving are related to the Maloth Srinu.
3. Land purchased by Karri Koteswar Rao from the original landlords by way of unregistered sale deed DT 14.4.1959, since the appellant name is not recorded in the revenue records.

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2. In the reference 2nd read above, Additional Agent to Govt. & Project Officer, ITDA, Bhadrachalam, Khammam District was requested to furnish parawise remarks and connected records.

3. The matter stood thus, the petitioner filed W.P. 32663 of 2011 before the Hon'ble High Court and the Court in its order dated.13.12.2011, while disposing the writ petition and directed the 1st respondent ie., Principal Secretary to Government (Tribal Welfare) to dispose of the appeal filed by the petitioner within two months after giving notice to both the parties.

4. The Additional Agent to Govt. & Project Officer, ITDA, Bhadrachalam, Khammam District has furnished parawise remarks and connected records vide reference 3rd read above.

5. The Revision Petition has been posted for hearing on 06.8.2012 and the same has been informed to Petitioner and the Respondents in the reference 4th read above and requested them to attend the said hearing on 06.08.2012. The arguments of both the parties/Counsels were heard. The Petitioner as well as the 4th respondent herein i.e., Sri Maloth Sreenu (Schedule Tribe) have submitted their Written Arguments.

6. Government have examined the records and order of the Additional Agent to Government, Khammam District in CMA No.11/2010 dated:19.11.2011 and written Arguments submitted by the Revision Petitioner and the 4th respondent, Sri Maloth Sreenu (Schedule Tribe). The Additional Agent to Government in his remarks has stated that the case was initiated by the Special Deputy Collector (Tribal Welfare), Bhadrachalam on the report of the Malothu Srinu, Chunchupally Kothagudem that the immovable property described in the schedule is under the possession of Smt Karri Koteswar Rao.

7. After due notices issued to the concerned parties, the Special Deputy Collector (Tribal Welfare), Bhadrachalam perused the records and observed that the documents disclose that the schedule lands are the patta lands of one Nagubandi Mallaiah and subsequently the name of his brother Nagubandi Panduranga Vittal who are non tribals and the contention of the petitioner i.e., Sri Malothu Srinu that the schedule lands are patta lands of his grand father, is not proved. The name of Maloth Bhavusingh and Malothu Mangthu found as cultivators for the schedule lands during the years 1959-60, 1963-64, 1964-65, and 1974-75. The petitioner failed to explain how the said Malothu Mangthu and Malothu Bhavsing are related to him, and how they were in possession for some period in the patta lands of Nagabandi mallaiah. The burden of proof to answer them lies on the petitioner.

8. The contentions of the respondent (Karri Koteswar Rao) are that he leased the schedule lands to the said Malothu Mangthu and Malothu Bhavsing and subsequently stopped giving the lease to them is convincing the court contra to the contention of the petitioner. The existence of the name of the said persons belongs to Malothu family in the cultivators column is not sufficient itself to draw the presumption that, the schedule lands are belongs to them and involves Tribal interest.

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9. On the other hand, the documents filed by the respondent (Karri Koteswar Rao) gives a strong inference that, he and one Pentaiah purchased the schedule lands under unregistered sale deed dated 14-04-1959 and the notice issued by the Revenue Inspector go to show that, the Government made efforts to take over the schedule lands from the possession of the respondent or default of payment of Land revenue and the respondent paid the arrears of Land Revenue.

10. Further observations of the order of the Special deputy Collector (Tribal Welfare) Paloncha, dated 29.9.1998 in LTR Case No. 526, 527, 529, 530, 531 and 532/1994/KGM establish that the documents filed by the respondent were already considered and on the strength of them, it was declared that, the possession of the respondent over the schedule lands is since prior to the commencement of the AP. Scheduled Areas Land Transfer regulation 1/1959 read with regulation 1/1970.

11. The Special Deputy Collector, Bhadrachalam in exercise of the powers conferred under section 3 (2) of the AP regulation 1/1959 r/w 1/1970 in respect of the schedule lands, not vested with any power to conduct a fresh enquiry and pass any order in respect of the same lands. The court of Special Deputy Collector, Bhadrachalam has found no merits in the petition filed by the petitioner (Malothu Srinu) (Tribe) in the result, the LTR case No 27/2010/KGM was dismissed for want jurisdiction since the schedule lands are already covered by the order of the court of Special Deputy Collector, Bhadrachalam dated 29.9.1998 in LTR case Nos. 526, 527, 529, 530, 531, and 532/1994/KGM in favour of the respondent (Karri Koteswar Rao) vide LTR Case No 27/2010/KGM,dt 03-03-2010.

12. Aggrieved by the orders of Special Deputy Collector (Tribal Welfare) Bhadrachalam Sri Maloth Srinu (Tribe) filed appeal petition before the Additional Agent to Government, Bhadrachalam after perused the case records and after giving opportunity held that as per the lower court order that the Respondent i.e., Sri Karri Koteswara Rao (Non S.T) stated that the Lower court passed orders after discussing various law points considering the provisions of Land Transfer Regulation. He also contended that "Lambadas" are declared as STs with effect from 17.12.1977 vide G.O.Ms.No. 838 and the Regulation came into force from 1.12.1963. prior to that Lambadas were treated as non-tribes. He further stated that he and Pentaiah(Late) purchased the land to an extent Ac 14.09 gts in Sy Nos 148/3 to 148/9 of Chuchupalli village from the late pattadar Nagubandi Mallaiah through unregistered agreement of sale dated 14-04-1959. previous LTR cases 526, 527, 529, to 532/94/KGM, dated: 29.09.98 were disposed by the Special Deputy Collector (Tribal Welfare) Palvanha in favour of respondent. On the same ground the LTR case No 27/2010/KGM was also disposed on 3.3.2010 by the Special Deputy Collector (Tribal Welfare) Bhadrachalam in favour of respondent.

13. The contention of the appellant is that the schedule land was purchased by appellant (Maloth Srinu) father Maloth Vasya on 29.3.1973 from Nagubandi Venkata Ratnamma and sons. The appellant filed pahanis for the years 1959-60, 1963-64, 1964-65, 1974-75, 1980-81, 1987-88, 1992-93, 2001-02, 2008-09 and old pass book.

14. The Additional Agent to Government, Bhadrachalam verified pahanies 1959-60, 1963-64, 1964-65 and 1974-75 and contended that in all these pahani Nagubandi people are shown as Pattadar and Maloth people shown as enjoyers. so their possession is established since 1959 onwards. How the lower court (Special Deputy Collector) dropped the case in favour of respondent(Karri Koteswar Rao) who has no prior to possession before the commencement of regulation. The lower court also stated that the burden lies on the petitioner (Tribal), as per the regulation the burden lies on the non tribal only to prove the case.

15. The respondents (Karri Koreswar Rao) contention is that the schedule land was purchased by him in the year 1959. But his name will not find place in the revenue records till 1987-88 that his possession is only after Regulation which is void under law. The Respondent contended that the documents produced by the appellant is a forged one. As seen from the said document it appears to be genuine.

16. The appellant filed a certified copy of order in Tenancy case number T.C(A1)13/1968., dt 19-12-1968 by the Tahsildar, Tribunal, Yellandu. This case is filed by the Nagubandi Panduranga Vithal and two others as petitioners and Maloth Bhavsingh and another as Respondents. In this case the Nagabandi people contended that the appellant (Maloth Srinu) stated that they are tenants and cultivators. If the Karri Koteswar rao really purchased the land in the year 1958-59 he would have filed a tenancy petition as owner of the land. But he has not filed said petition even though the alleged purchase was done by him in the year 1959. after perusing the documents of both sides, the Additional Agent to Government, Bhadrachalam contended that it is clear violation of Regulation. The lower court passed orders without proper verification of records.

17. Further, the Additional Agent to Government, Bhadrachalam contended that the respondent (Karri Koteswar Rao) contention is that previous the LTR case No. 526,527,529 to 532/94/KGM, dt 29.9.1998 were initiated between the Nagubandi Mallaiah as petitioner and the respondent by name Karri Koteswar Rao and dropped the proceedings in favour of the respondent. As per the said order the tribal appellant is not a party to the said proceedings. Hence it will not bind on the tribal appellant. As seen from the said LTR order it appears that the Lower Court without proper verification of the records passed orders and they are not considered Order of SDC in LTR case No. 27/10/KGM, dt 3.3.2010 is reveals that in the suit scheduled land to an extent of Ac 2-29 repeated. Further the total extent also shown mistakenly as Ac.14.05 instead if Ac 14-09. Likewise it is corrected as total as Ac14-09.

18. The Additional Agent to Government, Bhadrachalam in exercise of powers conferred by sub-section(3) of Rule 8 of the Andhra Pradesh Scheduled Area Land transfer Rules 1969 and Andhra Pradesh Scheduled Areas Land Transfer Regulation 1 of 1959 as amended by 1970, set aside the order passed by the Special Deputy Collector (Tribal Welfare), Bhadrachalam in LTR Case No.27 of 2010/KGM, dt 03.03.2010 in respect of the petition Scheduled Land of an extent of Ac. 2.04 gts in Sy.No. 148/3, Ac 2.18 gts in 148/4, Ac 2.00 gts in Sy.No 148/5 , Ac 2.13 in Sy.No 148/6, Ac 2.29 in Sy.No 148/7,Ac 2.24 in Sy.No 148/8 and Ac 0.01 in Sy.No 148/9 (Total extent Ac.14.09 gts) of Chechupally (V) Kothagudem (M) Khammam Dist vide CMA No. 11/2010,dt 19-11-2011.

19. The Tahsildar, Kothagudem directed to evict the Non tribal Respondents or any other person bound by this order from this said lands and restore the same to the Government for onwards assignment to the eligible tribal and comply report.

20. In the Revision Petition/Written Arguments, the Revision Petitioner among others has contended that the Additional Agent to Government, ITDA, Bhadrachalam while passing orders in CMA No.11/2010 has not taken into consideration the orders dt.3.3.2010 passed by the Special Deputy Collector (Tribal Welfare) Bhadrachalam in LTR Case No.27/2010 KGM. Also that Sri Malothu Sreenu, S/o.Late Vasya has failed to prove the relationship with Sri Malotu Mangthu and Malothu Bhavsingh (said to be tenants of the Petition Scheduled lands) and that the Sale Deed produced by the unofficial Respondent is not a genuine but forged one. His contention is that the Additional Agent to Government, ITDA, Bhadrachalam ought to have remitted back the case to the Special Deputy Collector (Tribal Welfare) Bhadrachalam , instead of passing the impugned orders and requested to set aside the orders of the Additional Agent to Government, Bhadrachalam, Khammam District.

21. Sri Malothu Sreenu (ST) in his written arguments has stated that the Petition Scheduled land was originally in possession of his great grand father (late) Malothu Samya Naik and subsequently his sons Bhavsingh, Harisingh, Dasru and Mangthya S/o. Sitya (i.e, B/o Malothu Samya Naik) were cultivating the Petition Scheduled lands and their names were recorded in the Revenue Records. He has also stated that Nagubandi Mallaiah, R/o Ellendu could manage to get the land in his name, in the records, without the knowledge of his elders and filed a case in the Court of Tahsildar, Ellendu regarding payment of Sist and got the case in his favour, however, came to some understanding with Maloth family and given Acres 3.20 guntas to them, subsequently, the legal heirs of M.Mallaiah have sold out the rest of land Acres 14.09 to M.Vasya, (F/o.Malothu Sreenu) S/o.Harisingh during 1973 by way of Sada Sale Deed. Sri Malothu Sreenu also stated that as his father got employment at Nav Bharat Company they have given the land on Koul to their relatives and after expiry of his father during 1994, they came back to their village, by that time, taking advantage of their absence, Sri Karri Koteswara Rao, the present Appellant has encroached the Petition Scheduled land and created record, some how. He has requested to do justice to him.

22. Government consequent on hearing the arguments and on perusal of the documents/written arguments filed by both the parties, is of the opinion that the Appellant has failed in submitting authenticated documentary evidence to prove his claim over the Petition Scheduled land and inclined to conclude that the Sale Agreement and other related documents, pahanies etc., produced by the Malothu Sreenu have enough validity in support of his claim over the Petition Scheduled land Acs.14.09 in Sy.Nos. 148/3 to 9 situated at Churchupalli (V) of Kothagudem (M), Khammam District.

23. Government after careful examination of the facts of the case, hereby order to up hold the orders dt.03.03.2010 of the Additional Agent to Government , ITDA, Bhadrachalam Khammam District in CMA No.11/2010 wherein the orders of the Special Deputy Collector (Tribal Welfare), Bhadrachalam in LTR Case No.27/2010 KGM are set aside and ordered for restoration of the Petition Scheduled lands in favour of Sri Maloth Sreenu (ST).

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24. The Collector, Khammam District/Additional Agent to Government, Bhadrachalam, Khammam District is requested to take necessary action in the matter accordingly and acknowledge the receipt of the case records which are returned herewith.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

Dr. A.VIDYASAGAR
PRINCIPAL SECRETARY TO GOVERNMENT (TW)

To:

The Collector & Agent to Govt., Khammam District.
The Additional Agent to Government & Project Officer, ITDA
Bhadrachalam, Khammam with RPAD of the following records.
(Case File C.M.A.No.11/2010.)
The Special Deputy Collector (TW), Khammam District.

Copy to:

Sri Kari Koteswara Rao S/o.Rama Bhadraiah R/o Rudrampur (V) Kothagudem (M)
Khammam District.
Sri Malotu Srinu, S/o.Late Vasya, R/o.Ramdas Thanda, Chunchupalli Village,
Kothagudem Mandal, Khammam District.
The Tahsildar, Kothagudem Mandal, Khammam District.
The G.P for Social Welfare, High Court of A.P. Hyderabad.
The P.S to Minister (TW) for information.
The P.S to Principal Secretary to Government (TW).
SF/SC.

// FORWARDED:: BY ORDER //

SECTION OFFICER